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**PROPOSED ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:** § Case No. 08-36705  
**SUPERIOR AIR PARTS, INC.,** § Chapter 11  
**Debtor.** §

**RESPONSE TO MOTION OF ACE GRINDING & MACHINE CO. FOR ALLOWANCE  
AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM  
UNDER 11 U.S.C. SECTION 503(b)(9) [Docket No. 60]**

TO: THE HONORABLE BARBARA J. HOUSER,  
UNITED STATES BANKRUPTCY JUDGE:

Superior Air Parts, Inc. (“Superior” or “Debtor”), as debtor and debtor-in-possession, and for its Response to Ace Grinding & Machine Co.’s (“Ace” or “Creditor”) motion (the “Motion”) for an order under § 503(b)(9) of Title 11 of the United States Code (the “Bankruptcy Code”) [Docket No. 60] requesting allowance of an Administrative Expense Claim and requesting immediate payment respectfully states as follows:

**I.**  
**RELIEF REQUESTED**

1. Pursuant to its Motion, Ace seeks allowance of their Administrative Claims under § 503(b)(9) of the Bankruptcy Code and to require the Debtor to pay those claims immediately. While the Debtor consents to allowance of the claim, the Debtor requests that Ace's request for immediate payment be denied. The Debtor intends to file a plan and treat the claim under a plan pursuant to 1129(a)(9)(A).

**II.**  
**BASIS FOR THE RELIEF REQUESTED**

2. It is essential to the Debtor's ability to continue to operate its businesses and ultimately reorganize that the Debtor maintain sufficient liquidity and cash flow. To pay pre-petition Administrative Claims immediately could severely impact the Debtor's ability to stay afloat long enough to consummate the purchase and could also result in disparate treatment of creditors.

3. Ace offers no cases, evidence, or even argument in support of its request for immediate payment.

4. The timing of payment of an administrative expense claim is within the discretion of the Court. *In re Garden Ridge Corp.*, 323 B.R. 136 (Bankr. D. Del. 2005).

5. "In making this determination, one of the chief factors courts consider is bankruptcy's goal of an orderly and equal distribution among creditors and the need to prevent a race to a debtor's assets." *In re HQ Global Holdings, Inc.*, 282 B.R. 169 (Bankr. D. Del. 2002).

6. "Prior to the enactment of 11 U.S.C. § 503(b)(9) [\*13] , it was black letter law that the question [of when] the bankruptcy estate should be ordered to pay an allowed administrative expense is within the bankruptcy court's discretion". *In re*

*Bookbinders' Restaurant, Inc.*, No. 06-12302ELF, 2006 Bankr. LEXIS 3749, 2006 WL 3858020 (Bankr. E.D. Pa. Dec. 28, 2006), *citing to*: "E.g., *In re Colortex Industries*, 19 F.3d 1371, 1384 (11th Cir. 1994); *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002)".

7. Section 503(b)(9) was enacted, apparently, to provide relief to creditors who had provided goods to the Debtor on the eve of bankruptcy. The relief provided, however, was not immediate payment. Instead, the provision exalts the status of the claim from a pre-petition claim, to an administrative claim. The effect of the change of status of the claim is to provide for payment in full upon confirmation of the plan. *In Re Plastech Engineered Products*, 394 B.R. 147, 152-153 2008 Bankr. (Bankr. D. Mich., September 16, 2008)

8. *In re Global Home Products, LLC*, No. 06-10340(KG), 2006 Bankr. LEXIS 3608, 2006 WL 3791955 (Bankr. D. Del. Dec. 21, 2006), and *In re Bookbinders' Restaurant, Inc.*, No. 06-12302ELF, 2006 Bankr. LEXIS 3749, 2006 WL 3858020 (Bankr. E.D. Pa. Dec. 28, 2006) are the seminal cases on the timing of payment of an administrative claim under Section 503(b)(9). Both cases conclude that there is no right of immediate payment.

9. *Global Home* reiterates the standard enunciated in *In re Garden Ridge Corp.*, 323 B.R. 136 (Bankr. D. Del. 2005) regarding the three factors the Court should consider in determining the timing of payments: prejudice to the Debtor, hardship to the claimant and prejudice to other creditors. 2006 Bankr. LEXIS 3608 at 12.

10. *Bookbinder* notes the *Garden Ridge* standard, but also references consistency with other sections of the code, citing: *In re Dieckhaus Stationers of King of*

*Prussia, Inc.*, 73 B.R. 969, 972 (Bankr. E.D. Pa. 1987) and recitation of the need to avoid a race to the courthouse and to ensure an equal distribution to creditors, citing: *In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr. D. Del. 2002). 2006 Bankr. LEXIS 3749 at 13-14.

11. In this case, all of the above considerations mandate a denial of Ace's request for immediate payment. Ace has made no effort to show any hardship. Ace should be paid pursuant to a plan under 1129(a)(9)(A), along with all other Administrative Expense creditors. To order immediate payment would surely and immediately start a "race to the courthouse", prompting all other administrative claimants to also seek immediate payment (indeed, one other claimant has already requested immediate payment).

12. The Debtor should not be put to the burden (and consequent drain on the estate) of responding to each and every Administrative Expense Claimant's request for immediate payment.

13. Perhaps more importantly, the Debtor intends to sell the business for a sufficient sum of money to pay all

WHEREFORE, the Debtors request that the Court deny Ace's request for immediate payment of its administrative expense claim, and such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was served upon the parties on the attached service list via First Class U.S. Mail, postage prepaid February 16, 2009.

/s/ Stephen A. Roberts

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